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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Afghanistan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Afghanistan prepared by Mr. Felix Ermacora, Special Rapporteur of the Commission on Human Rights, in accordance with Commission on Human Rights resolution 1991/78 of 6 March 1991, and Economic and Social Council decision 1991/259 of 31 May 1991.

Situation of human rights in AfghanistanInterim report by the Special Rapporteur

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I. INTRODUCTION

1. The Special Rapporteur was first appointed in 1984 by the Commission on Human Rights to examine the human rights situation in Afghanistan. Since then, his mandate has been renewed regularly by resolutions of the Commission which were endorsed by the Economic and Social Council and which requested the Special Rapporteur to report to the Commission and to the General Assembly. So far, he has submitted seven reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/24, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25 and E/CN.4/1991/31) and six to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669 and A/45/664).

2. At its forty-seventh session, the Commission on Human Rights decided in resolution 1991/78 to extend the mandate of the Special Rapporteur for one year, an extension which was confirmed by the Economic and Social Council in its decision 1991/259.

3. At its forty-fifth session, after considering the report submitted to it by the Special Rapporteur, the General Assembly adopted resolution 45/174, in which it decided to keep under consideration, during its forty-sixth session, the situation of human rights in Afghanistan in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

4. Accordingly, the Special Rapporteur has the honour to submit his interim report to the General Assembly in compliance with Commission on Human Rights resolution 1991/78 and General Assembly resolution 45/174.

5. Subsequent to the renewal of his mandate by the forty-seventh session of the Commission on Human Rights and in accordance with past practice, the Special Rapporteur again visited the area in order to obtain the most broadly based information possible. His visit to Pakistan took place from 10 to 17 and from 21 to 22 September and to Afghanistan from 17 to 21 September 1991. On 13 September 1991, the Special Rapporteur visited areas in Afghanistan controlled by opposition forces in Nangarhar Province.

6. During his visit to Pakistan, following the established schedule, the Special Rapporteur was received by representatives of the Ministry of Foreign Affairs and by the Chief Commissioner for Afghan Refugees.

7. In Baluchistan Province, the Special Rapporteur met the Regional Commissioner for Afghan Refugees and visited the Al Salam Saudi Hospital and the International Committee of the Red Cross (ICRC) Surgical Hospital for War-Wounded. He also visited the New Saranan Refugee Camp, where he spoke with newly arrived refugees from Jowzjan Province, and stopped near the camp at Pishin, where he spoke with newly arrived refugees from Faryab Province.

8. In the North West Frontier Province, the Special Rapporteur met with the Regional Commissioner for Afghan Refugees. He visited the Kuwaiti Red Crescent Society Hospital and the Afghan Surgical Hospital. He also had talks with representatives of various humanitarian organizations based in Peshawar, and with other private individuals.

9. In Peshawar, the Special Rapporteur met with Professor B. Rabbani, Mr. Z. Mojaddidi and Mr. E. Gailani, representing the so-called Afghan Interim Government (AIG), with whom he exchanged views on the overall situation in the country.

10. During his visit to Afghanistan, the Special Rapporteur was received, in accordance with the programme established in consultation with the Afghan authorities, by the Vice-President of Afghanistan, the Prime Minister, the Minister for Foreign Affairs, the Chief Justice, the Minister of Justice, the Minister for Defence, the Minister of the Interior, the Minister for State Security, the President of the High Court of Appeal, the Attorney-General and the Minister for Repatriates' Affairs. He also met with representatives of the National Salvation Front, the Lawyers' Association of Afghanistan, and the Vice-President of the Watan Party.

11. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi Central Prison and the Watan Nursery. He also visited the "400-bed" Military Medical Academy Hospital, the ICRC Surgical Hospital for War-Wounded and met with representatives of the Afghan Red Crescent Society.

12. The Special Rapporteur was once more able to visit areas in Afghanistan which are not under the control of the Government. In September, he visited the Rodat and Kogiani districts in Nangarhar Province, where he met representatives of local authorities and could observe the actual situation in the province; he was able to travel freely. The Afghan Government was informed of the visit.

13. The findings of the Special Rapporteur during this visit should be supplemented by reading the Third Consolidated Report of the Office of the United Nations Coordinator for Humanitarian and Economic Assistance Programmes relating to Afghanistan and the Annual Report for 1990 of the Swedish Committee for Afghanistan. These reports, as well as discussions with representatives of various humanitarian organizations, provided the Special Rapporteur with comprehensive insight into the general situation in the country.

14. During his visits, the Special Rapporteur received full cooperation from the governmental authorities of Afghanistan and Pakistan, who did everything possible to ensure that his programme conformed in every detail with the wishes he had expressed. The Special Rapporteur particularly appreciated the possibility given to him to revisit regions not under government control in Nangarhar Province in Afghanistan. In this respect, he once again wishes to thank the Office of the Coordinator for United Nations Humanitarian and Economic Assistance Programmes relating to Afghanistan (UNOCA) for its most

efficient logistical assistance, without which these visits would not have been possible.

15. It should be recalled that the Special Rapporteur submitted an interim report to the General Assembly at its forty-fifth session (A/45/664) containing preliminary conclusions and recommendations. The Special Rapporteur submitted a final updated report to the Commission on Human Rights at its forty-seventh session. Both reports were based on visits to Pakistan and Afghanistan carried out in September 1990 and January 1991. It should also be recalled that, in September 1990, the Special Rapporteur had occasion to visit for the first time areas in Afghanistan not under government control.

16. Subsequent to Commission on Human Rights resolution 1991/78, renewing his mandate, the Special Rapporteur followed the course of events through the period covered by this report, i.e. March to October 1991. The method of reporting of the Special Rapporteur has always been to place the emphasis on the period under review, since the renewal of his mandate. For the purpose of drafting this seventh report to the General Assembly, in addition to gathering information during his visits to Pakistan and Afghanistan, the Special Rapporteur systematically evaluated written and oral information relevant to his mandate as received from various individuals and organizations.

17. The Special Rapporteur followed with keen interest the political statements regarding the situation in Afghanistan, such as the appeal of the Secretary-General of the United Nations for further efforts to end suffering in Afghanistan which also contained a five-point peace plan (see annex I), and the press conference held by Mr. Benon Sevan, Special Representative of the Secretary-General in Afghanistan and Pakistan, on 16 July 1991, at which he spoke of a peaceful, political settlement of the Afghan question as the only viable solution to the problem, as well as of the budgetary constraints affecting the implementation of the United Nations Humanitarian and Economic Assistance Programmes Relating to Afghanistan. The Special Rapporteur also noted with satisfaction the joint United States/Soviet Union statement of 13 September 1991 on the simultaneous cut-off of weapons deliveries to their respective Afghan allies by 1 January 1992 (the so-called "negative symmetry"), as well as the different commentaries thereon.

18. The Special Rapporteur has also become aware of new sources of information since political refugees who left Afghanistan after the attempted coup of March 1991 have informed non-governmental organizations of their experiences in Afghanistan. An additional source of information are persons who have been the subject of exchanges of prisoners. Some of them were detained in Afghan prisons after conviction for relatively short periods, so their accounts of their experiences while in custody were relatively recent and, in the opinion of the Special Rapporteur, can be considered as trustworthy. This information sheds new light on certain aspects of the situation of human rights in Afghanistan.

19. Visits to refugee camps and hospitals once again enabled the Special Rapporteur to inform himself about the effects of the conflict that still characterizes the present situation of human rights in Afghanistan.

II. GENERAL OBSERVATIONS CONCERNING THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

20. When the Special Rapporteur first visited the region in 1984 and 1985, Afghanistan was under foreign occupation. The conflict between the "small contingent of Soviet troops" and the government forces, on the one side, and the armed opposition forces, on the other, clearly showed all the signs of an international conflict, to which the Geneva Conventions of 12 August 1949 applied. On the other hand, the repression and persecution of all sorts of political opponents to the Government created a human rights situation which was in clear contradiction with the country's international commitments, since the Democratic Republic of Afghanistan had acceded to the International Covenants on Human Rights. A significant consequence of the conflict which in itself still constitutes a paramount human rights and humanitarian law problem is the number of refugees, who are still about six million. Apart from the information available to the Special Rapporteur, the mere fact of the existence of refugees and wounded persons on such a massive scale owing to the confrontation between a foreign army and united opposition forces was sufficient to infer that systematic and massive violations of human rights had taken place in the country.

21. The Special Rapporteur's first visit to Afghanistan in 1987 coincided with the launching of the so-called Policy of National Reconciliation by the Afghan Government and the Vladivostok Declaration of the then General Secretary of the Communist Party of the Soviet Union, Mr. Mikhail Gorbachev, in which he spoke of a possible withdrawal of Soviet troops from Afghanistan.

22. Since the Special Rapporteur's first visit to Afghanistan in the summer of 1987, he has been able to obtain a more in-depth impression of the human rights situation in the country. The cooperation of the Government with the United Nations, and in particular with the Special Rapporteur of the Commission on Human Rights, has greatly contributed to his ability to report on the human rights situation to the relevant United Nations bodies in a more comprehensive manner.

23. The aspiration of the United Nations to arrive at a political solution of the conflict has been only partly successful. The concluding of the Geneva Accords in 1988, through the mediation of the United Nations, paved the way for Soviet troops to leave the country completely by mid-February 1989. However, in spite of the fact that the withdrawal was welcomed the world over, an overwhelming majority of reports indicated that States continued to deliver war materials to the parties on both sides of the military divide. The conflict continued and the refugees whose free and safe return was envisaged by the Third Agreement of the Geneva Accords did not take place. Nevertheless, the legal nature of the conflict started to change. It became a conflict between the Afghan Government and heavily armed opposition forces which has gravely affected the civilian population. A political solution was not in sight. Humanitarian law was violated and obvious acts of terrorism perpetrated by the opposition forces (terrorist attacks within the meaning of the First Protocol additional to the Geneva Conventions) prompted the

Government to retaliate. This build-up of violence inflicted indiscriminate suffering on the civilian population.

24. The cooperation of the Government with the United Nations and ICRC has increased over the years. The full access to convicted prisoners throughout the country, which has been granted to ICRC staff, is an important indicator of the Government's awareness regarding its international humanitarian responsibilities. However, ICRC still needs to obtain authorization to visit unconvicted prisoners under the authority of the Ministry of State Security.

25. In political terms, the period up to 1990 was marked by attempts to achieve a certain unity between the opposition groups based in Pakistan and the Islamic Republic of Iran. These attempts at unification were not echoed inside Afghanistan. It would appear that powerful field commanders had developed their own policies and rules of warfare. Areas not under government control rarely have a genuine administrative structure and law and order are not ensured in many parts of the country. This creates specific human rights problems which affect the civilian population. In addition, the absence of administration hinders the work of international organizations, in particular the United Nations and ICRC. The fact that substantial portions of the territory are not controlled by the Government accounts for a lack of international legal responsibility. The disastrous human rights situation has become so complex that only a viable political solution of the conflict, which should be arrived at without further delay, in which all parties involved therein would cooperate, could lead to the restoration of law and order throughout the country.

26. The year 1991 is a year when a new attempt to reach a political solution to the conflict could, in the opinion of the Special Rapporteur, result in an improvement of the human rights situation. The United Nations five-point peace plan, announced by its Secretary-General, contains elements which could constitute the basis for preparing the ground for the restoration of human rights. It is also encouraging to note the Joint Declarations of Islamabad and Tehran of 30 July and 29 August 1991 respectively, which show that the parties involved are aware that political steps must be taken in order to pave the way for the implementation of the five-point peace plan. If the Declarations have been interpreted correctly, it would appear that the principle of unanimity will be replaced by the principle of decision-making by a majority. 1/ In addition, the joint United States/Soviet Union statement of 13 September 1991 concerning a simultaneous cut-off of arms deliveries to their respective Afghan allies by 1 January 1992 ("negative symmetry") appears to indicate that the "super-Powers" are also opting for a political rather than a military solution to the conflict. For this initiative to be effective, the Special Rapporteur is of the opinion that other countries should also refrain from supplying weapons to both sides. Although these declarations were welcomed by several opposition groups, the Government of Afghanistan and the neighbouring countries, there is no specific mention of human rights unless one were to interpret phrases such as, "restoration of civilian order", and "allow for the return of several million Afghan refugees to their homes", and the wish that "the Afghans would be in a position to

decide their future for themselves" as depicting a pragmatic approach to human rights issues. Surely the results of the peace or reconciliation process should have a positive bearing on the restoration of human rights in the country.

27. The situation of human rights in Afghanistan has to be viewed against this political background. More than 1 million persons have been killed and innumerable wounded. There have been thousands of political prisoners over the years, tens of thousands of persons are missing and there are more than 6 million refugees and displaced persons. In addition, innumerable villages have been destroyed. The economic infrastructure is in ruins. Instability, which is the result of the current failure to arrive at a political solution of the conflict, prevails in many parts of the country. There may now be hope to find a way out of this situation.

28. This report should consider the situation of human rights in the country by taking into account the present political situation of Afghanistan and its international and domestic dimensions. It should also evaluate the respect within the territory of Afghanistan for international commitments based on the international human rights instruments to which the country has acceded. With regard to the responsibility conferred upon these commitments, human rights should also be considered in the light of the impact of the instability prevailing in certain areas of the country where the Government is unable to maintain a normal administrative structure and where actual control is exercised by field commanders in a decentralized manner. Legally speaking, so long as there is no other central Afghan Government recognized by the United Nations, the current one is to be held internationally responsible for the aforementioned situation.

29. In spite of the fact that the Afghan situation has been described as a "forgotten war" and a "forgotten people", two non-governmental organizations published extensive reports on the human rights situation in Afghanistan. One has been published by Asia Watch is based on a fact-finding mission to Pakistan and Afghanistan which took place between June and August 1990. 2/ The other reports were produced by Amnesty International and concern specific human rights questions. 3/ The Special Rapporteur has studied these reports with great care and has found that, in particular, the Amnesty International reports partly corroborate the findings of the Special Rapporteur. On the other hand, the Amnesty International reports relate facts which often refer to an earlier period. The present situation of human rights in Afghanistan is not always accurately described when such a method of reporting is employed and conclusions therefore cannot always be correctly drawn. The Special Rapporteur tries to obtain the most reliable information possible in order to be able to report in the most objective manner. This is particularly the case when his findings are supported by direct experience on the spot and by corroborating evidence. Although the Special Rapporteur is aware that he cannot pronounce himself with absolute certainty on the veracity of testimonies against the Afghan Government, he has over the years become quite familiar with the Pol-i-Charkhi Central Prison and other places of detention and is able to evaluate testimonies, particularly when they concern recent

time periods. All his findings have been cross-checked against information obtained from other independent sources. The Special Rapporteur has certain reservations with regard to the testimony of persons who have held positions of authority in government recently and have left the country for political reasons. They now appear ready to attack government practices for which they themselves have been partly responsible. The Special Rapporteur considers such statements reliable and fit to be incorporated into his report only when they are corroborated by information from other independent sources.

30. The following topics ought to be considered in this context: the situation of refugees; the human rights situation as a result of warfare; and the human rights situation owing to the absence of law and order in different areas of the country. All these topics concern human rights. The refugee situation is a human rights problem in itself, as it concerns the right to self-determination, the dignity of human beings as affected by the circumstances of refugee life, the right to life and the right to freedom of movement. Considerations relating to humanitarian law are particularly applicable to the refugee situation, so far as the living conditions of refugees are concerned. Warfare generates human rights problems and is not limited only to humanitarian issues when rules in respect of "grave breaches" of the Geneva Conventions are concerned (articles 50 and 130 of the First and Third Geneva Conventions, respectively). As regards unrest in many parts of the country, the rules enshrined in the International Covenants on Human Rights and in the Afghan Constitution must be applied.

A. The present refugee situation

31. The Special Rapporteur has gathered information on the number of refugees from different sources. The statistics provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Chief Commissioner for Afghan Refugees of Pakistan are most helpful in this regard. The Afghan Minister for Repatriates' Affairs has furnished information on the current number of returnees to the country. The number of Afghan refugees in Pakistan is still estimated at 3.27 million. The number of Afghan refugees in the Islamic Republic of Iran is still estimated at 2.8 million.

32. In his last report, the Special Rapporteur informed the Commission on Human Rights on a certain trend of refugees to return. The United Nations, in cooperation with the authorities of Pakistan, launched in July 1990 a pilot project on voluntary repatriation to Afghanistan. This pilot project has been extended twice. From September 1990 to January 1991, some 25,000 refugees had availed themselves of the facilities offered under the pilot project to return. The Chief Commissioner for Afghan Refugees of Pakistan stated that 177,000 refugees had returned since the beginning of the pilot project. The Afghan Minister for Repatriates' Affairs indicated that, from January to August 1991, 35,374 refugees had been repatriated. Amongst them, 20,450 came from the Islamic Republic of Iran, 14,634 from Pakistan and 290 from other countries. An airlift had been organized for transporting returnees with the help of UNHCR.

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33. The Afghan authorities have expressed their readiness to welcome the returnees and have created appropriate facilities for this purpose. The Special Rapporteur described these facilities in his report to the Commission on Human Rights (E/CN.4/1991/31, para. 32). Four-hundred-and-thirty-eight legislative measures were adopted to facilitate the integration of the returnees. In the event of a massive repatriation, much more international help would be needed.

34. In contrast to the information provided in paragraphs 22 to 25 of his last report to the Commission on Human Rights, the Special Rapporteur received no information on cases of impediments to the return of refugees. Neither the opposition forces nor armed groups inside Afghanistan were reported to have intercepted or hindered their return. Proclamations hostile to the repatriation of refugees (see A/45/664, para. 35) have also not been recorded.

35. Although the general conditions for the return of refugees have become more favourable, no massive return has been reported. The refugee situation can still be described as negatively stable. New arrivals owing to the current situation in several provinces of Afghanistan have been reported. The Special Rapporteur was informed on the refugees who have left the city of Khost and the area around it which has been the theatre of heavy fighting in March 1991. It was reported that about 40,000 refugees fled this area. The Special Rapporteur interviewed newly arrived refugees from the provinces of Faryab and Jowzjan, some of whom he found in a deplorable state.

36. The Special Rapporteur investigated the reasons why people were leaving the country and why refugees were not returning. The reasons why the newly arrived refugees left the country are the instability in their respective areas and the absence of law, order and safety due to the excesses of armed groups. Witnesses stated that banditry and the forcible recruitment of young men into the armed forces of the opposition groups were common practice. Another reason, valid in particular for persons coming from Jowzjan Province, was the continuous bombarding and artillery shelling of areas inhabited by the civilian population.

37. The main reason for the refugees' hesitation to return is the almost complete destruction of the economic infrastructure of areas from which the refugees originate and their fear of bombing, shelling and mines. In the present circumstances, it would be very difficult to rebuild the villages which have been destroyed and to cultivate the land in view of the fact that the irrigation system has also been destroyed. The Special Rapporteur has been an eyewitness of such a situation in Nangarhar Province. This area continues to be endangered because of the artillery and rocket attacks of the government forces.

38. An additional reason is the political argument that the current Government of Afghanistan is not a genuinely Islamic one.

39. The everyday situation of the refugees in Pakistan has not improved. Food rations have been cut down. The number of items supplied has also been

reduced. The distribution of sugar, rice, edible oil and kerosene has stopped. Only 5 per cent of the daily requirements are covered by international assistance.

B. The armed conflict in Afghanistan and its repercussions on the human rights situation in areas not under government control

40. The Government still maintains territorial sovereignty in most provincial capitals. In March 1991, the Government lost its control over the city of Khost. There is a functioning administration only in very few of the areas not under the control of the Government. It would appear that a certain level of administration has been established in the following provinces: Badakhshan, Baghlan, Ghasni, Helmand, Kunar, Laghman, Nangarhar, Paktika, Takhar and Wardak. In these areas, schools have been opened, agricultural programmes have been developed and health facilities have been set up. The Special Rapporteur feels that the existence of a kind of local government reflects a certain degree of self-determination.

41. The administration in these areas is in the hands of shuras (councils or assemblies) which are divided into commander shuras, which deal with defence matters, and civil shuras, dealing with civilian matters. The Special Rapporteur met with the representatives of such shuras in Nangarhar Province where their functions were explained. Shuras also exercise a certain judicial authority. A person from among the members of the shura is designated to act as judge. Investigation into the crime is carried out by other members of the shura, while the sentence is pronounced by the judge alone. Judges are elected and investigation into crimes is separated from the penal jurisdiction over crimes. Government laws and ordinances are not applied in these areas. The administration functions according to specific guidelines and jurisprudence is based entirely on the Sharia (Islamic law). The death penalty is applied. Prisons exist and misgivings have been voiced that area commanders exercise their authority quite arbitrarily.

42. Factual respect of basic human rights in these areas is founded on the Sharia. The principles contained in human rights instruments which have been ratified by the Afghan Government are not applied, and those who rule these territories were not even aware of the existence of these instruments.

43. The civilians in these areas live in a certain state of apprehension in villages which have largely been destroyed and try to cultivate the land. The sound of artillery shelling never subsides and rocket attacks are a common feature of daily life. This implies that the economic and social rights enshrined in the international instruments which the Afghan Government has ratified are not guaranteed. The only safeguard concerning these rights is provided by non-governmental organizations if they are able to work without hindrance. There have been numerous instances where the safety of the staff of non-governmental organizations was jeopardized by the actions of armed groups. Even the humanitarian activities of ICRC, which had expanded its health services to Herat and Mazar-i-Sharif, have been endangered by the

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attacks of armed groups from both sides of the military divide. This has prompted ICRC to halt its activities temporarily in the aforementioned areas. The Special Rapporteur was shown photographs of vehicles bearing the symbol of the Red Cross which had been riddled with bullets. Incidents were cited where the staff of ICRC and the United Nations were ambushed or subjected to arbitrary detention, sometimes lasting for several weeks. These persons were reportedly freed only after lengthy negotiations.

44. The conflict has also created large groups of internally displaced persons. The battle around Khost forced 3,000 persons to move to Kabul. It has been indicated that United Nations relief organizations have ceased to assist displaced persons.

C. Warfare and human rights in the light of the principles of the Geneva Conventions and their Additional Protocols

45. The system of warfare between government forces and armed opposition groups is characterized by mutual attacks on strongholds and strategic targets and by acts of retaliation. The opposition forces have tried to bring their military equipment closer to larger cities and towns which come within range of sites where heavy artillery and rockets are positioned. Government forces try to thwart such advances and destroy the opposition strongholds. From the standpoint of humanitarian law, the indiscriminate rocket and bomb attacks spread disproportionate suffering among the civilian population. As the Special Rapporteur has already mentioned several times, this constitutes a clear violation of article 51 of the First Protocol Additional to the Geneva Conventions. The Government side claims that the opposition forces intentionally use civilian settlements for military purposes by introducing ammunition and other combat matériel into the settlements. The Government claims that it is obliged to destroy these military targets, however many losses this may inflict on the civilian population. On the other hand, it has been stated that rocket attacks by the opposition forces are expressly directed against civilian targets without any military necessity. The Special Rapporteur is not in a position to verify these allegations. He is convinced, however, that military actions inflict heavy losses on the civilian population.

46. As has been mentioned before, the war has taken on a new, twofold dimension. Differences between military commanders belonging to different political groups, such as those which have developed in Logar, Kunar, Kandahar, Helmand and Baghlan Provinces, have resulted in armed confrontation. It would also appear that the Government's policy is to offer its good offices in mediation aimed at solving tribal differences. The conflict between the Hazara and Pashtuns described in previous reports has been solved. It has also been reported that members of government militias who belong to different tribes were employed among tribes outside their territory of origin wearing their national dress, which may be designed to foster animosity between different ethnic groups.

47. The opposition referred to the following incidents in this context: the city of Khost was bombarded several times by government air force and artillery after being taken by opposition forces in March 1991; Talogan, the capital of Takhar Province, was bombarded by SCUD missiles in May 1991; the city of Bamyan has suffered aerial bombing; the Zenda Jan area in Herat Province, which had been reconstructed, was bombarded in May 1991 and United Nations food depots were destroyed; the Maidan Shar district in Wardak Province has been bombarded; an explosion, which caused hundreds of deaths, occurred in Asadabad, the capital of Kunar Province.

48. Explanations for these incidents are contradictory. Representatives of opposition forces claim that they were the result of arbitrary action aimed at punishing the population which collaborated with opposition groups. Government sources claim that the areas in question were attacked because opposition forces used them for military purposes, although they are situated in an apparently civilian environment. So far as the incident in Asadabad is concerned, the Government has denied that the massive explosion was caused by a government rocket attack. It affirms that the explosion was either an accident or that it was the result of in-fighting among opposition groups. On the other hand, the Government has claimed that actions of a clearly terrorist nature have been perpetrated by the opposition forces against the civilian population in larger villages and cities.

49. The Afghan Minister for State Security stated that the following terrorist acts have been committed since 21 March 1991: the opposition has fired 7,944 Sakkar rockets, killing 223 civilians and injuring 671; 256 mines laid by the opposition forces have exploded, causing the death of 35 persons, and 17 explosive devices have been detected. These figures were confirmed by the Minister of the Interior and the Minister of Defence. The opposition forces bombarded Jalalabad in October 1991 and numerous civilians were reportedly killed and injured.

50. The treatment of prisoners taken in the battlefield remains a concern of humanitarian law. With regard to prisoners belonging to the opposition forces taken by government authorities, the situation has not altered. They continue to be considered as "terrorists" and are brought to trial and sentenced in accordance with the relevant Afghan laws. Such prisoners have on occasion been exchanged for Soviet prisoners or government soldiers. The Special Rapporteur has met some persons who were part of such an exchange and they are reliable sources of information. The reports they gave on the treatment of more than 2,000 soldiers who were taken prisoner by the opposition forces in the battle of Khost seem to indicate that the treatment of prisoners can be considered more or less satisfactory and in line with international humanitarian law. ICRC representatives were allowed to visit the majority of the prisoners immediately after the battle of Khost. However, they were subsequently denied access to most of them for follow-up visits. The Special Rapporteur was unable for logistical reasons to visit prisoners of war under the authority of opposition forces led by Commander Haqqani with a view to confirming these reports, although an invitation to that effect had been made. Hundreds of wounded prisoners have received medical care from ICRC,

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while others were placed in hospitals run by opposition forces. The Special Rapporteur was able to interview a number of them. He was also able to interview a number of Afghan medical officers who were taken prisoner by opposition forces during the battle of Khost and were ultimately able to return. Their testimony may also be considered reliable. They, too, were treated in a more or less humane way, given the circumstances in which they found themselves. Interrogations were carried out by opposition forces without the use of torture and concerned military information. It is the Special Rapporteur's impression that a common trend among the opposition forces has been to treat prisoners humanely regardless of their political affiliation. No reports of atrocities were received. However, reference has been made to a report that, in late August 1991, numerous headless corpses were found in Kunar, in houses which were used as prisons by opposition groups. Finally, a prominent opposition leader has made reference to the philosophy of the Sharia which, in Sura 40, speaks of pardon. It has been stated that no sentence is passed without the due process of law before an Islamic tribunal.

51. As has been his custom during his visits to Pakistan and Afghanistan, the Special Rapporteur also visited hospitals for treatment of the war-wounded. In Baluchistan Province, he visited the ICRC Surgical Hospital at Quetta and the Al-Salam Saudi Hospital at Saranan. The influx of patients at the ICRC Surgical Hospital has been reduced in comparison with last year and, at the time of the Special Rapporteur's visit, there were 115 patients for a hospital capacity of 150 to 160 persons. The Al-Salam Saudi Hospital has reported an occupancy rate of 80 to 90 per cent, which is also lower than last year. Most injuries still come from gunshot wounds and bomb and mine blasts. Cases of typhoid and malaria had been reported lately. In Peshawar, the Special Rapporteur visited the Kuwait Red Crescent Society Hospital and the Afghan Surgical Hospital. The Kuwait Red Crescent Society Hospital had 105 in-patients out of a capacity of 150 and reported treating 200 to 300 out-patients on a daily basis. At the time of the Special Rapporteur's visit, there were 71 in-patients at the Afghan Surgical Hospital. The number of patients appeared to be stable. He also visited the ICRC office. In Kabul, the Special Rapporteur visited the 400-bed Military Medical Academy Hospital and the ICRC Surgical Hospital. In all hospitals he was given statistical data showing the occupancy rates of these hospitals. ICRC has field posts in a number of areas in Pakistan situated near the Afghan border. ICRC posts in Kandahar, Herat and Mazar-i-Sharif have been closed due to the instability of the situation and for lack of safeguards concerning Red Cross personnel whose security has been endangered. All hospitals visited by the Special Rapporteur still have a remarkably high occupancy rate. The number of wounded persons brought to the hospitals depends on the magnitude of hostilities inside Afghanistan. Hospitals in the North West Frontier Province were full during and after the battle of Khost. Apart from this, the occupancy rate appears to be decreasing. The 400-bed Military Medical Academy Hospital in Kabul has treated half as many wounded persons as was the case a year ago. The current average monthly number of wounded in this hospital is about 800, of whom 95 to 99 per cent are mine blast and rocket explosion cases. The armed forces have field hospitals. Certain branches of State

Security units also have their own hospitals. War-wounded civilians are also treated at the 400-bed Military Medical Academy Hospital. The ICRC Hospital in Kabul reported an average of 88 in-patients from January to August 1991. Most injuries are still due to shelling, gunshot wounds and mine blasts.

52. The Special Rapporteur would like to say at this juncture that he visited the headquarters of the Afghan Red Crescent Society in Kabul. He was informed about its collaboration with ICRC and with other Red Cross and Red Crescent Societies. It was particularly gratifying to note that an informal meeting had taken place in Colombo between the Red Crescent Society of Afghanistan and the Red Crescent Society of Pakistan, and it was welcomed as a positive development. The Afghan Red Crescent Society informed the Special Rapporteur of its activities, including those during rocket attacks. Reference was also made to its collaboration with the State authorities and the contacts it maintains in the provinces, and to the application of the Convention on the Rights of the Child to which Afghanistan has acceded.

D. The situation of human rights in government-controlled areas

53. The Special Rapporteur considers that the human rights situation in Afghanistan does not fall entirely within the purview of internal affairs of State because of the respect of the obligations which Afghanistan has assumed before the international community by adhering to international human rights instruments which are also enshrined in article 133 of the Constitution of 1990. In spite of the situation of war in the country and the fact that the Government does not exercise full control over the territory of the Republic, there have been certain positive developments in the field of human rights. It is possible to assess whether the Government is honouring the international human rights commitments it has accepted, because the area it controls - the principal cities and villages encompassing a population of 4 million - is easier to circumscribe. The same cannot be said of the millions of refugees and the population living in a situation of political instability in areas where local de facto governments exercise their power and which are not under the control of the central Government.

54. The June 1990 Constitution of the Republic of Afghanistan, to which government officials refer, is transparent. The Special Rapporteur has already recognized that it contains human rights provisions which are quite progressive, particularly in chapters 2, 3 and 4. The effectiveness of these human rights provisions cannot be viewed separately from the main political structure of the Government. In spite of the political pluralism, to which article 5 of the Constitution refers, and the fact that the political pre-eminence formerly attributed to the Peoples' Democratic Party of Afghanistan (PDPA) (article 4 of the Draft Constitution of July 1987) and subsequently to the National Front of the Republic of Afghanistan (article X of the Constitution of 1987) has disappeared from the new Constitution, the party now called the Watan ("homeland") Party remains the only real political factor in the country. This has been confirmed by all objective observers of the Afghan political scene. This fact remains regardless of the provisions of

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the Constitution which tend to play down the influence of the party, for example, in article 5 of the Constitution, which states that "judges and attorneys cannot be members of a political party during the terms of their office". This appears to function in so far as former party members have to choose between remaining in the party or holding important public office. The predominance of the party has been removed from the Constitution, but power is mainly concentrated in the hands of the President of the Republic, who is himself a leading personality in the party. In addition, according to the Constitution, the President of the Republic is the head of State and shall exercise his powers in legislative, executive and judicial spheres in accordance with the provisions of the Constitution. There is not a single important area of State power in which the President would not have to play an important role. With regard to human rights, he has the right to grant pardon, which ultimately means that he decides about capital punishment. He also appoints the holders of principal public functions and is the personality to whom other offices are ultimately accountable. Similar presidential functions can also be found in other constitutions. However, and this would be the aspect of the Afghan Constitution that could be subjected to criticism, the exercise of power by the President is not submitted to checks and balances. Since all instruments which normally constitute elements of checks and balances concerning the powers of a president at present depend on the Watan Party, which is headed by the President, he is unable to function without the party's agreement and its executives in the Loya Jirgah, the House of Representatives, the Constitutional Council and the judiciary. The only balance to this power could be the Parliament, if it were a multi-party body and if it were elected by universal, equal, free, secret and direct ballot, as provided for in article 79 and article 68, point 8, of the Constitution. This fact must be taken into account in the assessment of the human rights problem.

55. Freedom of religion appears to be guaranteed both in the Western and in the Islamic sense, in spite of the fact that opposition groups call for the establishment of an Islamic government since they do not consider the present one as Islamic, although article 2 of the Constitution recognizes the religion of Islam as the religion of Afghanistan and the Sharia of Islam as the base of the judicial system (article 112 of the Constitution).

56. Freedom of the press and, by the same token, freedom of expression also appear to be guaranteed. The following newspapers are published: Wahdat, Palwasha, Yahag, Salam, Negah, Shokmak and Hafta. Some of these newspapers have been censored and two, Azadi and Nawai Sobh, have been closed. The existing newspapers can publish their views with the exercise of a certain self-censorship. The Asia Watch report gives a sound and accurate analysis of the reality of the freedom of expression.

57. The Special Rapporteur was unable to examine the current problems of academic life due to time constraints.

58. Freedom of movement, so far as this right can be exercised in view of the war situation, has improved. The Minister of the Interior stated that, in the course of the last one-and-a-half years, 51,000 persons had travelled outside

the country and 55,000 had visited Afghanistan. The citizenship of ex-King Zaher Shah and his family, which had been revoked when Afghanistan became a republic, was unconditionally restituted by a decree in September 1991.

59. The key problem as regards the human rights situation is the extent to which political pluralism, whose fundamental preconditions are civil and political liberties, can really be exercised by those who advocate it without fear of persecution. It is essential to know how these laws by which the Constitution should be implemented are interpreted in reality. After numerous discussions with persons who have been detained in Afghan prisons, the Special Rapporteur has the impression that the margin of appreciation to implement political pluralism is very narrow, and that the authorities interpret those human rights provisions which allow for interference in civil liberties under the pretext of State security, public order, respect for the rights of others, in a very narrow sense. The Special Rapporteur does not defend armed action as a permissible form of political pluralism, but has the impression that in critical situations the authorities' decisions favour restrictions rather than favouring the liberty of persons.

60. It was necessary to make this remark in order better to understand the situation of personal liberty and security of persons. The Special Rapporteur would like to reiterate what he has already stated in his report to the Commission on Human Rights (E/CN.4/1991/31, para. 51). The Minister for State Security reminded the Special Rapporteur that, despite the Afghan Government's willingness to respect human rights and its commitments in this regard, it was necessary to take the war situation into consideration. Under such circumstances, it might not be possible to adhere strictly to the human rights provisions concerning personal liberty, in the interest of State security.

61. So far as the information provided by the competent ministers (Minister of the Interior, Minister for State Security and Minister of Defence) on the right to personal liberty is concerned, the Special Rapporteur was informed of the number of convicted prisoners, prisoners in detention on remand, prisoners awaiting trial and prisoners awaiting sentencing. It should be recalled that convicted prisoners fall under the authority of the Minister of the Interior, while the others fall under the authority of the Minister for State Security.

62. In the country as a whole there are at present 4,432 convicted prisoners. Out of this number, 2,752 are political prisoners and 1,680 common-law prisoners; of these, 91 are female prisoners, of which 89 are common-law prisoners and only two are political prisoners. Among the total number of prisoners are 34 foreigners: 26 Pakistanis, 5 Iranians, 2 Arabs of unspecified nationality and 1 Malaysian. There are 2,680 prisoners in Pol-i-Charkhi Central Prison, of whom 1,888 are political. There are no female-political prisoners. Among the 792 common-law prisoners 37 are female. The Special Rapporteur requested to visit the entire premises of the prison which is under the authority of the Ministry of the Interior and had no difficulty in receiving permission to do so. He visited all respective blocks (3, 4, 5, 6 and 7) as well as an empty block, and was allowed to speak freely with prisoners, without the presence of prison authorities after the persons

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had been freely selected by a staff member of the Centre for Human Rights. At the time of the Special Rapporteur's visit to the prison a mass demonstration of prisoners took place during which they called for freedom, democracy and an end to the war. The prisoners also voiced their opposition to the pending decisions concerning the capital punishment of 97 prisoners who had been convicted in the context of the attempted coup d'état of 6 March 1990. The Special Rapporteur has once again come to the conclusion that the frequent allegations that there are more prisoners in Pol-i-Charkhi Prison than indicated by the Government are not true. The Special Rapporteur also heard complaints that the prison medical staff administer out-of-date Russian drugs which have lost their curative effect. The Special Rapporteur also spoke with a prisoner who indicated that he is able to use exercise facilities quite regularly. Foreign prisoners reiterated their complaints concerning isolation from family members but also from representatives of their respective countries. The Special Rapporteur is conscious of the difficulties which may arise in a large prison where prisoners can understandably be discontented. It is hoped that the department within the Office of the Attorney-General which deals with prisoners' complaints will take the above information into account, with a view to remedying the situation.

63. The number of prisoners is periodically reduced by amnesties. Since January 1991, 15 to 20 general amnesty decrees have been issued resulting in the release of 1,022 persons. On the occasion of the birth of the Prophet Muhammad, 55 prisoners were released on 21 September 1991. In addition, more than 200 persons were granted pardons and released through individual amnesty decrees. An exchange of prisoners has also taken place: 25 members of opposition groups were exchanged for 1 Soviet soldier.

64. The Minister for State Security, who is responsible for prisoners under interrogation, prisoners awaiting trial, those whose interrogation has been concluded and those awaiting verdict, gave the Special Rapporteur a list with a breakdown of prisoners by the above-mentioned categories. At present there are 688 prisoners awaiting sentencing throughout the country. There has been an increase in the number of unconvicted prisoners, due to the attempted coup d'état, who are awaiting trial in this connection or for a decision of pardon or commutation of their sentences. Many of these prisoners are detained in blocks 1 and 2 of Pol-i-Charkhi Central Prison; 99 persons are detained in block 1 in connection with the coup d'état; 70 are in block 2 awaiting trial and 35 are awaiting the final decision. Seventy persons are awaiting sentencing while 95 persons are awaiting the final decision of the court.

65. Ninety-seven prisoners have been sentenced to the death penalty on account of their participation in the attempted coup d'état. These prisoners have lodged an appeal for pardon and are awaiting the final verdict. In this connection, the Minister for State Security referred to a change in policy concerning capital punishment and expressed the hope that, in general, persons who have been sentenced to death for high treason would have their sentences commuted. Hope was expressed that capital punishment would be abolished, except in cases prescribed by the Sharia. When he was received by the First

Deputy President of the Republic, the Special Rapporteur pleaded for a humane decision concerning the appeals of prisoners who had been sentenced to death. He asked the Deputy President to inform the President of the Republic of his plea.

66. ICRC continues to enjoy full access to convicted prisoners, under the authority of the Ministries of the Interior and Justice, in Pol-i-Charkhi and other prisons. The Special Rapporteur was also informed, however, that ICRC is still unable to visit the prisoners who are under the authority of the Minister for State Security. The main hindrance for a visit to these prisoners in accordance with ICRC rules is apparently the Government's reference to a law (which the Special Rapporteur could not find) stipulating that a visit by the Red Cross can only take place in the presence of a representative of the attorney's office. The attorney in charge should give the relevant permission for such a visit. The Special Rapporteur indicated that such visits are of paramount importance in the eyes of the concerned world public opinion. Only the granting of permission for such visits and only free discussions with prisoners without witnesses could somewhat counter the allegations of those who still claim that persons under interrogation are tortured.

67. Amnesty International has recently issued two reports. 3/ For several years the Special Rapporteur has stated that he has not heard reliable reports on torture in Afghanistan. The well-researched report of Amnesty International has raised doubts concerning the effectiveness of the reporting system of the Special Rapporteur. He therefore studied the Amnesty International reports with particular care and has brought their main elements to the attention of the competent Afghan authorities. In its report, Amnesty International stated that "There are currently over a dozen interrogation centres, known as 'riasats' (directorates) in Kabul ...". In his report to the Commission on Human Rights (E/CN.4/1991/31, para. 37), the Special Rapporteur listed the same places of detention which were mentioned in the Amnesty International report. He has visited three of these interrogation centres in recent years: Riasat-e-Haft in Shashdarak, Riasat-e-Umoomi, known as Sedarat, and, in 1987, Riasat-e-Panj, in Darul Aman Avenue. The Special Rapporteur is convinced that, besides Shashdarak and Sedarat, interrogations similar to those mentioned above also took place on other premises. He has received no reports to the effect that these places continue to be used as interrogation centres. However, the Special Rapporteur has heard testimonies that interrogations take place in KHAD (State Information Service) offices in the provinces.

68. The Special Rapporteur has attempted to obtain the same information sources as those used by Amnesty International and has found three such sources of information: persons who were former civil servants working within the judicial system and who have left Afghanistan after the attempted coup d'état of March 1990; persons who were recently released from Pol-i-Charkhi Central Prison; and persons who were convicted for their alleged participation in the coup. Recently, an additional source of information are government officials who have stated that torture and cases of torture have

been the object of official investigations. The Special Rapporteur is of the opinion that the persons whom he has interviewed have provided him with credible testimony. He has come to the conclusion that, in spite of article 42 of the Constitution and the firm rejection of allegations by high officials, torture could not have been eradicated completely from interrogation practices. It would appear that persons suspected of having acted against State security have been tortured during the process of interrogation by security personnel with a view to obtaining information about a presumed network engaging in anti-constitutional and terrorist activities. The allegations made and the information given were very precise. The means of torture were described as electric shocks, beating (sometimes inflicting serious injury), cigarette burns and continuous deprivation of sleep. Torture is practised in interrogation centres such as Shashdarak and Sedarat or in similar centres in the provinces. The length of torture practices is not limited to one or the other interrogation session but could last for weeks in certain cases. In all cases, physiological damage was caused. Psychological torture was also applied, such as bringing in the prisoner's family. Psychological torture could also consist in placing sane persons in an insane environment. The practice of complete isolation during interrogation is uncontestable.

69. In the opinion of the Special Rapporteur, the practice of torture was encouraged by the excessive length of detention on remand in the hands of the security forces, by the judicial system as applied to persons considered to be terrorists which has lasted up to June 1991, by the isolation of prisoners in detention on remand due to the lack of an effective system of defence, by the fact that ICRC had not been allowed to visit interrogation centres in accordance with its traditional criteria and practices, and by the practice of denying family members access to prisoners detained under these conditions. The Government did not contest that the length of investigative proceedings was unreasonably long. However, allegations of torture should be carefully investigated on a case-by-case basis.

70. Detention on remand is the most sensitive period for a prisoner in any legal system. Therefore, the international human rights instruments contain a series of rules on how to protect detainees on remand and guarantee an equitable system of penal prosecution. Despite the existence of important general provisions on safeguarding personal liberty in articles 41 and 42 of the Constitution, these provisions are not specific enough to guarantee this same liberty for prisoners in detention on remand. There are no guarantees that lawyers may visit a prisoner who is in detention on remand and there are no obligations to control the actions of security personnel during the process of interrogation. The Constitution states "in accordance with the law". The laws in question date back to a period when Afghanistan was in a much more difficult situation and had not yet embarked on the road to national reconciliation. The period of detention on remand has been readjusted. After 24 hours, the security apparatus has to receive a request from the competent attorney for a prolongation of the detention for an additional period of one week. Detention by the security apparatus may not exceed nine days. The defendant's case should go before a court on the tenth day. The period of

investigation is limited to two months and may be extended only in exceptionally complex cases up to five or six months. The case may not remain for more than six months with the court of appeal and has to be dealt with by the high court before nine months have expired. The decisions concerning the prolongation of detention on remand rest with the competent judge. When tribunals only allow for the extension of the period of detention on remand without the detainee being able to take legal action with regard to the situation, the detainee is at the mercy of the investigative authorities.

71. The report of Amnesty International of August 1991 ^{3/} refers to the system of special courts and special attorneys that has been in a certain way responsible for the length of the period of detention on remand and had really exercised a political jurisdiction, the main task of which was to safeguard national security without taking into account the rights of prisoners. The report of Amnesty International is valuable. It indicates, inter alia, "... in March 1991, President Najibullah announced that the Special Court for National Security and the prosecution offices associated with it were no longer in existence". Amnesty International had no additional information concerning the abolition of the Court or what may have replaced it. The Special Rapporteur has been informed about the new judicial system which is in conformity with article 109 of the Constitution. A "unified system of judiciary" has now been organized. The Special Rapporteur has held lengthy discussions with the Chief Justice, the Minister of Justice, the Attorney General and representatives of the High Court of Appeal, as well as with members of the Association of Afghan Lawyers about the new judicial system and has received all the relevant information thereon, both orally and in writing. He has also received the texts of the relevant new laws, in particular "The Law concerning Organization and Authorities of Law Courts in the Republic of Afghanistan" of 31 March 1991. The most important consequence of the "unified system of judiciary" is that the Special Courts - the Military Courts, Special Courts of National Security, the courts dealing with the internal and external security of the country - have been dissolved. All cases are now brought before the ordinary courts which are organized as district, provincial and central courts. The High Court of Appeal, which deals with cases in the final instance, has its seat in Kabul. It is important to note that the dissolution of the special courts has entailed application of article 5 of the Constitution to the effect that "judges and attorneys cannot be members of a political party during their terms of office", resulting in the separation of the party and the judiciary. Nevertheless, despite the dissolution of the special courts, military matters and matters of internal and external security are still dealt with by specific panels and their corresponding chambers of the Supreme Court and of the High Court of Appeals (see articles 15 to 18 and 44 to 48, respectively, of the aforesaid Law). It would appear that these courts are now composed of professional judges and no longer of party members. A similar system has been developed with regard to the Attorney's Office. There are no more specialized attorneys corresponding to the matters dealt with by special courts, but a unified system of attorneys seems to have been established. The Special Rapporteur was also informed, however, that the Supreme Court is still "authorized to establish, when necessary, special and mobile courts" for

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dealing with exceptionally complex cases such as embezzlement or juvenile cases. The Special Rapporteur expressed his surprise at this system of empowering a court to create another court.

72. It ought to be stated that this judicial reform has been undertaken after the proceedings against the nearly 300 persons who were allegedly involved in the attempted coup d'état of March 1990 had been concluded. The competent authorities explained to the Special Rapporteur that pending trials will be conducted along the lines of the new judiciary system. The Minister of State Security informed the Special Rapporteur that the persons whose trials are pending will be in a more favourable position than those who have been sentenced by special courts of national security. It is hoped that a retrial of the cases of persons convicted by special courts would be possible, in order to bring their sentences in line with the new system of the judiciary.

73. It is to be hoped that this organizational change will enable the judiciary to fulfil its duties in complete conformity with the Afghan Constitution and the relevant provisions of international human rights instruments to which Afghanistan is a party. However, parallel to these organizational changes, which should diminish the criticism directed against the political and judicial system, the substantive provisions concerning the penal procedure and the law against terrorism have still not been amended.

74. One step forward has already been made. A regulation entitled "Regulation of the Department of Legal Aid of the Supreme Court of the Republic of Afghanistan", submitted to the Special Rapporteur on 19 September 1991, has been enacted. Its objectives are, inter alia, the "observation of equality of the rights of citizens particularly the poor in various phases of judicial prosecution of criminal cases" and the "provision of facilities during investigation and trial for needy persons not knowing the Pashtu and Dari official languages". Hope is expressed that the provision may be interpreted in a way that would also allow political prisoners in detention on remand to be considered as "needy persons", or that the possibility of legal aid to these groups of persons may at least not be excluded. The Ordinance does not specify how the attorneys' offices have been incorporated into this new legal aid system. The attorneys' offices still play a role of overwhelming importance in "political" proceedings. It is only when they are prepared to allow ICRC to visit prisoners in detention on remand during the period of interrogation that there can be hope that, in combination with the new unified judicial system, the "political" judiciary will have undergone a significant change. The Kabul Times of 17 July 1991 contains a report on the "Uniform Attorney System: Herald of High Social Justice" which facilitates understanding of the new judicial system, including the general system of attorneys.

75. Another problem concerning the liberty of persons is the fate of children who were allegedly brought to the Soviet Union for educational purposes. The Special Rapporteur has heard repeated allegations that many thousands of Afghan children were brought against their own or their relatives' will to the Soviet Union for educational purposes. The Special Rapporteur has already

studied this question in 1987. In his report to the Commission on Human Rights (E/CN.4/1991/31, para. 47) he also made reference to this problem. It has been alleged that since 1981 2,000 children who are either war orphans or children whose parents were members of the Peoples' Democratic Party of Afghanistan had been sent annually to schools in the Soviet Union. Other schoolchildren have reportedly also been sent abroad. Political opponents have stated that these young persons were trained for the purpose of becoming political cadres. The Special Rapporteur once again visited the social institution of the Perwarishgahi Watan Institute and was able to discuss relevant problems with responsible personnel. This institution has taken care of approximately 12,000 children who have lost their relatives due to the war situation over the last 10 years. The parents of some of the children are in prison. About 2,000 children in all were sent to the Soviet Union for education from the Watan Nursery. The Special Rapporteur has also approached the Soviet authorities on this subject every year and is grateful for having received a written reply to this question, as follows:

"The long war in Afghanistan resulted in the destruction of some 2,000 schools and other educational establishments, as a consequence of which many thousands of Afghan children lost the chance of even a primary education. Furthermore, a large number of children were orphaned. The country's difficult economic situation is obliging low-income families, which account for a large share of the population, to send their children out to work rather than to school.

"Under these difficult conditions, the Government of the Republic of Afghanistan requested the Soviet side to take a number of Afghan orphans and children of badly-off parents to be brought up and schooled in the Soviet Union. The Soviet Government, guided by purely humanitarian considerations, responded favourably to that request. A Soviet-Afghan agreement on the sending and acceptance of Afghan orphans and other children for schooling in Soviet boarding schools was concluded in October 1984. There are now 12 such schools, attended by some 1,000 Afghan children, in various parts of the Soviet Union. In addition to general subjects, the Afghan schoolchildren study their native language and literature, Afghan experts being employed for that purpose. On completion of their schooling, some of the children return home while some enter Soviet special secondary schools or vocational technical colleges on preferential terms.

"Contrary to the disinformation deliberately spread by certain circles of the Afghan opposition, Afghan children are schooled in the USSR on a purely voluntary basis. The schooling is devoid of ideological content and no forcible transfer of Afghan schoolchildren to the Soviet Union has ever occurred or is occurring today.

"Should the Special Rapporteur of the Commission on Human Rights wish to visit some boarding schools for Afghan children in the Soviet Union, he will be given all possible assistance."

Social and economic rights

76. So far as the social and economic rights in Afghanistan are concerned, the Special Rapporteur has been unable to study the situation with regard to these rights in depth. However, he has been able to obtain some impressions on the spot during his visit to the area as well as impressions based on both oral and written information, in particular coming from United Nations agencies and non-governmental organizations. The Special Rapporteur would suggest that the question of the enjoyment of these rights should be considered with regard to the different categories of the population in Afghanistan: the refugee population, the civilian population living in areas not under government control, and the population living in government-controlled areas.

77. The enjoyment of social and economic rights of persons living in government-controlled areas appears to be guaranteed at the moment so far as basic needs are concerned. However, inflation rises from month to month and there is a parallel money market. It would appear that at least in Kabul the markets are relatively well supplied. The situation in areas not controlled by the Government differs from region to region. The Afghan Information Centre has published price lists issued by opposition forces in areas where they have established an organized administration. The agricultural infrastructure remains destroyed in many areas. Due to the war situation, people are unable to revive the agriculture. The Special Rapporteur was able to observe the destroyed irrigation systems and the disastrous consequences which this entails. The economic situation of the refugee population, in particular of newly arrived refugees, is deplorable, at least with regard to Pakistan. Rations have been considerably reduced, forcing them to look for work in nearby towns and villages. The Special Rapporteur has the impression that they represent cheap labour, which has a bearing on the labour market as a whole. As concerns the health situation, the Special Rapporteur has the impression that only the population of Kabul receives adequate medical assistance regularly from government medical institutions, the Afghan Red Crescent Society and other non-governmental organisations.

The right to self-determination

78. There are different aspects of the right to self-determination with regard to United Nations law and to international public law. They are contained in article 1 of the human rights covenants. They are also described in the United Nations Declaration on Principles of International Law [General Assembly resolution 2625 (XXV) of 24 October 1970 and General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights 12 (21) (article 1) of 12 April 1984]. In the case of Afghanistan, there are two main methods of achieving self-determination at issue. Namely, the right of the Afghan refugees to return to their homes in full dignity and freedom, as provided for in various United Nations resolutions and in the Geneva Agreements. Another aspect of self-determination applicable to the case of Afghanistan is the free determination of the political status of the country.

79. So far as the right to self-determination of refugees is concerned, it would appear that this right cannot be exercised because of the present situation in the country.

80. As concerns the right to self-determination of the Afghan population as a whole, the best method of exercising this right is elections. The right concerning elections is not only guaranteed in article 25 of the International Covenant on Civil and Political Rights but also enshrined in article 79 and article 66, point 8, of the Constitution of Afghanistan. Nevertheless, this right cannot be effectively exercised because the refugees have not returned, and a genuine infrastructure based on democratic pluralism is not guaranteed owing to the situation in the country as a whole.

81. The attempts of the opposition forces grouped within the so-called Afghan Interim Government (AIG), which have been described at length in the Special Rapporteur's report to the Commission on Human Rights (E/CN.4/1991/31, paras. 82 and 88), to draft and implement a "Law for the Formation of an Islamic Elective Competent Loya Jirgah of Afghanistan" have ultimately failed. This has been confirmed by all competent personalities.

82. The present situation in which the people of Afghanistan find themselves as a whole does not appear propitious for exercise of the right to self-determination. The Afghan society is fragmented at the moment. Only a process of political reconciliation could lay the foundations for exercising the right to self-determination. It would appear that the five-point peace plan, contained in the statement issued by the Secretary-General of the United Nations on 21 May 1991 (annex I hereto), together with the Declarations of Islamabad and Tehran (annexes II and III) as well as with the statement concerning "negative symmetry" issued by the United States of America and the Soviet Union point to the direction to be taken if the right to self-determination is to be exercised by Afghans and through Afghans alone.

83. Political observers are of the opinion that segments of the Afghan society must be represented by tribal leaders, well-known field commanders, religious scholars and eminent social and political personalities, who would be able to represent the silent majority and should participate in the peace process that would finally result in self-determination.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

84. The political situation with regard to Afghanistan has evolved. The aforesaid five-point peace plan of the Secretary-General of the United Nations, the Declarations of Islamabad and Tehran, the joint statement made by the United States of America and the Soviet Union concerning "negative symmetry", all show growing concern for a political solution to the Afghan conflict.

85. However, the conflict is still going on and it has an adverse effect on the human rights situation in the region, and in particular in Afghanistan. The human rights situation continues to have an international dimension, which warrants the continuing attention of the world community.

86. The refugee situation has not changed significantly. There are still over 6 million Afghan refugees in Pakistan, the Islamic Republic of Iran and other countries. The refugee situation constitutes a complex of human rights and humanitarian law problems. Very few refugees are prepared to go back. The reason why the refugee population remains stable is their assessment of the human rights situation inside Afghanistan from a political, economic and military perspective. Considerable parts of the country are still destroyed, there is no sound administrative infrastructure and law and order are not widely guaranteed.

87. The enjoyment of economic, social and cultural rights of refugees is not guaranteed. Due to the decrease of international assistance, and despite the humanitarian efforts of the host countries, in particular Pakistan, the extent to which refugees can enjoy economic, social and cultural rights is diminishing.

88. The armed conflict between the Afghan Government and the armed opposition forces is characterized by attacks launched from both sides and by indiscriminate actions of retaliation. This still results in heavy casualties and material losses among the civilian population. Rockets and long-range artillery are still used. All war matériel is of foreign manufacture.

89. Acts of terrorism within the meaning of the First Additional Protocol to the Geneva Conventions have continued. They, too, result in a heavy loss of life among the civilian population.

90. The numerous prisoners taken during the battle of Khost have generally been treated in conformity with humanitarian law, both by the Government and by the opposition forces. ICRC was initially allowed to visit the majority of the prisoners. However, they were subsequently denied access to most of them for follow-up visits. The Special Rapporteur was also offered to visit prisoners taken by opposition forces in a prison camp under their authority, but was unable to do so for logistical reasons.

91. The fate of other prisoners in the hands of the opposition forces is unknown to the Special Rapporteur.

92. The human rights situation in government-controlled areas is satisfactory in general, but actual enjoyment of all rights largely depends on the principal structures of the Government which are not subject to sufficient control through a system of checks and balances. Only a freely elected government based on party pluralism would be able to guarantee fully all the freedoms enshrined in the Afghan Constitution. Reference should be made to the unconditional restitution by decree of the citizenship of the former king and members of his family.

93. The fate of political prisoners who are under interrogation, awaiting trial or sentencing, remains alarming. Allegations of ill-treatment and even of torture have recently been brought up. This information cannot be entirely discarded as ill-founded. At least, confinement in complete isolation for a long period of time may be considered an established fact. The arbitrariness of detention on remand could not be controlled, at least as long as the special courts of national security were in existence. However, in order to check the veracity of all torture allegations, in particular during lengthy police custody, a case-by-case cross-examination, which the Special Rapporteur was not able to carry out at present, would have been necessary. A certain number of witnesses whom the Special Rapporteur interviewed showed visible, prima facie, signs of torture, the origins of which the Special Rapporteur could not determine without doubt and which would require very careful case-by-case examination.

94. The Afghan Government has dissolved the special courts of national security and has established a new, unified judiciary and attorney system, which is to be welcomed. Pending procedures will be completed under the new judicial system. It is hoped that by not having politically affiliated judges, better control may be exercised over the interrogation period. However, specialized chambers dealing with matters concerning the internal and external security of the country continue to exist.

95. ICRC has so far not received permission to visit prisoners under interrogation, awaiting trial or awaiting sentencing held by the Ministry of State Security. It would appear that these prisoners also do not have access to defence attorneys. However, the Government has recently established an institution which will offer legal defence assistance.

96. The Special Rapporteur is of the opinion that the number of inmates in Pol-i-Charkhi Central Prison is 2,680, of whom 1,888 are political prisoners, which corresponds to the figures provided by the Government. There has been little variation in the number of political prisoners over the past several years owing probably to amnesty decrees. However, the fate of foreign prisoners is still a matter of concern.

97. At the moment of writing this report, there were about 97 political prisoners who had been accused of participating in the coup d'état attempt of March 1990. They have been sentenced to death and have appealed to the President for commutation of their sentences. The Special Rapporteur has received indications from members of the Government that these sentences may not be carried out, and that the President may consent to their commutation. Further consideration is being given to altering the system of capital punishment in favour of the right to life.

98. Allegations continue to be made that prisoners held by the opposition forces are not treated in accordance with humanitarian law. The Special Rapporteur was unable to investigate these allegations so far for logistical reasons. Owing to the absence of law and order in certain areas, a number of United Nations agencies and ICRC have temporarily halted their activities in some areas not under government control.

99. Allegations also continue to be made concerning the fate of Afghan children who are being educated in the Soviet Union. The Government of the Soviet Union has provided the Special Rapporteur with detailed explanations on this matter which appear to clarify the situation.

100. The enjoyment of economic and social rights differs from region to region and by category of the population. In government-controlled areas, the enjoyment of these rights is more effective and better organized than in the rest of the country as well as with regard to refugees.

101. Due to the conflict, the Afghan society is fragmented. Therefore, the right to self-determination is only partially implemented. It is certainly not guaranteed to the refugees. One of the fundamental expressions of self-determination is universal, equal, free, direct elections by secret ballot, which cannot be held in their traditional form under the present circumstances. Opinions differ on how to arrive at a common agreement concerning exercise of the right to self-determination.

B. Recommendations

102. The peace process should not overlook the human rights issues in the given situation. Human rights should be an element of the peace process and a political solution should be firmly placed within the framework of respect for human rights. The United Nations peace plan should be the basis of all other commitments implemented through Afghan efforts. Universal and general elections in Afghanistan with the participation of all Afghans could lay foundations for a new human rights order.

103. A cease-fire and de-mining are preconditions for the return of refugees in honour. The international community should be prepared, together with the Governments concerned, for a massive return of refugees and should assist these Governments in the elaboration and implementation of return plans.

104. All political prisoners on both sides should be released through amnesties, individual pardons or exchanges of prisoners.

105. After the introduction of the new judicial system in Afghanistan, political prisoners who were previously sentenced by special courts should have a right to retrial.

106. The Standard Minimum Rules for the Treatment of Prisoners should be strictly adhered to, in particular with regard to prisoners in detention on remand.

107. Prisoners considered as combatants should be treated in accordance with humanitarian law.

108. The death sentences pronounced against persons who are alleged to have participated in the attempted coup d'état should not be carried out. The

policy of applying capital punishment should be reconsidered in accordance with the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (General Assembly resolution 44/128).

109. Persons under interrogation should not be kept in isolation. They should have access to legal remedies during the period of police custody. Their treatment should be regularly controlled by independent judges. Torture practices should be stopped. If any are discovered, appeal should immediately be made to the High Court of Appeal. Prisoners' complaints should be taken into account by the competent department of the Attorney-General's office.

110. ICRC should be allowed regularly and unconditionally to visit prisoners on remand, awaiting trial or awaiting sentencing held by the Ministry of State Security.

111. The Government of Afghanistan should be invited to accede without any reservation to the Optional Protocol to the International Covenant on Civil and Political Rights. The Special Rapporteur is of the opinion that opposition forces should be equally bound by international human rights instruments.

112. Genuinely free and universal elections should be prepared under the auspices of the United Nations.

113. The Special Rapporteur is of the opinion that the vigilance of the United Nations concerning the situation of human rights in Afghanistan should come to an end only when it is satisfied that free elections leading to the massive return of refugees and to the monitoring of human rights through an independent Afghan legal system have been achieved. The concern of the United Nations with regard to human rights in Afghanistan could then be replaced by a system of advisory services.

Notes

1/ See The Frontier Post, 14 September 1991, p. 4, "Impact of New Reality on Afghan Imbroglia".

2/ "Afghanistan: the Forgotten War. Human Rights Abuses and Violations of the Laws of War Since the Soviet Withdrawal."

3/ "Afghanistan: Reports of Torture and Long-Term Detention Without Trial" (March 1991), and "Afghanistan: Unfair Trials by Special Tribunals" (August 1991).

ANNEX I

Statement of 21 May 1991 on Afghanistan by the Secretary-General
of the United Nations, containing the five-point peace plan

Reports of active hostilities in Afghanistan over the last few weeks have reconfirmed my concern that further efforts are needed to bring about an end to the suffering of the Afghan population. At a time when other developments seem to be attracting the attention of the world, the Afghans have become a forgotten people. Their plight unfortunately is very real and the urgency to put an end to it is no less felt today at a time when the international community is showing a growing determination to assist in the alleviation of human suffering.

In pursuance of the mandate entrusted to me by the General Assembly in its resolution 45/12 of 7 November 1990, I have persevered in encouraging all segments of the Afghan people, as well as the Governments concerned, to work towards a comprehensive political settlement in Afghanistan.

I have on several occasions reiterated that the question of Afghanistan cannot be solved except by political means, and that to achieve such a settlement, a consensus is needed both at the international and the national levels.

I have just concluded an intensive round of consultations, through my Personal Representative in Afghanistan and Pakistan, Mr. Benon Sevan, with all segments of the Afghan people, including political leaders of opposition groups and resistance commanders, based in Peshawar, Tehran and inside Afghanistan, as well as with prominent Afghans currently residing outside the region. The Governments concerned have also been consulted.

I have impressed on all my interlocutors that whatever the process to attain a settlement, it should be a strictly Afghan political process, free from foreign interference.

Encouraged as I am by the views expressed, I believe that the following elements would serve as a good basis for a political settlement in Afghanistan, acceptable to the vast majority of the Afghan people:

1. The necessity of preserving the sovereignty, territorial integrity, political independence and non-aligned and Islamic character of Afghanistan;

2. The recognition of the right of the Afghan people to determine their own form of government and to choose their economic, political and social system free from outside intervention, subversion, coercion or constraint of any kind whatsoever;

3. The need for a transition period, details of which have to be worked out and agreed upon through an intra-Afghan dialogue, leading to the establishment of a broad-based Government:

(a) The need, during that period, for transitional arrangements acceptable to the vast majority of the Afghan people, including the establishment of a credible and impartial transition mechanism with appropriate powers and authority (yet to be specified) that would enjoy the confidence of the Afghan people and provide them with the necessary assurances to participate in free and fair elections, taking into account Afghan traditions, for the establishment of a broad-based Government;

(b) The need for cessation of hostilities during the transition period;

(c) The advisability of assistance, as appropriate, of the United Nations and of any other international organization during the transition period and in the electoral process;

4. The necessity of an agreement - to be implemented together with all agreed transitional arrangements - to end arms supplies to all Afghan sides, by all;

5. The recognition of the need for adequate financial and material resources to alleviate the hardship of the Afghan refugees and the creation of the necessary conditions for their voluntary repatriation, as well as for the economic and social reconstruction of Afghanistan.

It is my intention to continue my discussions with all concerned in order to encourage and facilitate the working out of the details of the above elements.

I appeal to all Afghan leaders to put the interest of the Afghan people above all other interests, and resolve their differences through a political process, bringing to an end the long and devastating war.

I also call on all Governments concerned to support the political process, and respect the right of the Afghan people to decide their own future.

ANNEX II

Joint Declaration of Islamabad of 30 July 1991

The Foreign Minister of the Islamic Republic of Iran, His Excellency Dr. Ali Akbar Velayati, and the Secretary-General for Foreign Affairs of the Islamic Republic of Pakistan, His Excellency Mr. Akram Zaki, held a joint tripartite meeting in Islamabad with the leaders of the Pakistan and Iran-based Afghan Mujahideen parties, on 29 and 30 July 1991. The joint meeting hailed the glorious Jihad of the valiant Afghan people against foreign occupation, their great sacrifices including more than one and half million martyred and the resolute support to the cause of the Jihad by the Islamic nations and the international community. The leaders of the Afghan Mujahideen parties expressed deep appreciation and gratitude for the support of the Jihad and for the generous hospitality extended to more than five million Afghan refugees by Iran and Pakistan on their soil.

The meeting emphasized the pursuit of a just and peaceful settlement of the Afghanistan problem that restores the Islamic identity and the independent, sovereign and non-aligned character of Afghanistan. The Afghan people must be able to choose their own form of government without outside intervention or pressure. Conditions should be created for the voluntary return of the Afghan refugees to their homes in safety and honour. Such a settlement alone will bring peace to Afghanistan and strengthen security and stability of the entire region, necessary for progress and development of the brotherly peoples of the three countries.

The meeting welcomed the growing cooperation between the Islamic Republic of Iran and the Islamic Republic of Pakistan for a just and peaceful settlement of the Afghanistan problem, consistent with the objectives of the Afghan Jihad and aspirations of the Afghan people. The Islamic Republic of Iran and the Islamic Republic of Pakistan agreed to make joint efforts to mobilize international support for the cause of peace and for a just solution of the Afghanistan problem. The meeting also emphasized the special importance of the role that the Islamic countries have in achieving these objectives.

The meeting emphasized the need for unity among all Islamic and patriotic Afghan forces who supported the Afghan Jihad, to promote peace and to work for a just solution of the Afghanistan problem.

The meeting noted with appreciation the efforts of the United Nations Secretary-General for the solution of the Afghanistan problem. While emphasizing the observance of the Islamic principles, the meeting recognized positive elements in the five-point statement by the United Nations Secretary-General. The statement could serve as a possible basis for a settlement for the Afghanistan problem. Therefore, the statement could be further studied and, after any necessary clarifications, could be considered for a comprehensive solution acceptable to the people of Afghanistan. Any

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solution for the Afghanistan problem should lead to the replacement of the present illegal government in Kabul and the establishment of an elected Islamic government acceptable to the people of Afghanistan.

In the spirit of the noble Jihad and deeply conscious of the great sacrifices rendered by the valiant Afghan people and the immense tragedy and hardship suffered by them, the leaders of the Afghan Mujahideen parties reaffirmed their resolve to continue efforts for peace and for a just solution of the Afghanistan problem. They reaffirmed their commitment to respect for life and property of all Afghans and to the reconstruction of their homeland ravaged by foreign occupation and conflict. They envisaged future Afghanistan to be Islamic, non-aligned, an abode of peace and an important contributor to tranquility and stability of the region, committed to a policy of mutual friendship and cooperation with its neighbours.

ANNEX III

Joint Declaration of Tehran of 29 August 1991

By the grace of God, the second round of the tripartite meeting was held in Tehran on 28 and 29 August 1991, with the participation of H.E. Dr. Ali Akbar Velayati, Minister for Foreign Affairs of the Islamic Republic of Iran, H.E. Mr. Akram Zaki, Secretary-General of the Ministry of Foreign Affairs of the Islamic Republic of Pakistan, and the leaders of Afghan Mujahideen parties based in Iran and Pakistan, with the purpose of advancing the objective of a just and peaceful settlement of the Afghanistan problem, set out in the Joint Declaration of 30 July 1991 issued in Islamabad.

In an atmosphere of trust and confidence, the meeting voiced its support for the just struggle of the people of Afghanistan and appreciated the continued cooperation of the Islamic Republic of Pakistan and the Islamic Republic of Iran for the settlement of the Afghanistan problem consistent with the objectives of the Afghan jihad and the aspirations of the Afghan people.

The meeting once again emphasized the need for restoration of the Islamic identity and the independent, sovereign and non-aligned character of Afghanistan. The people of Afghanistan should be able to determine their destiny without any foreign pressure or intervention.

The Afghan Mujahideen leaders welcomed efforts made by Pakistan and Iran to stimulate international support for the cause of peace and a just solution of the Afghanistan problem and urged for the continuation of these efforts.

The meeting expressed satisfaction at the international support, especially that accorded by the Organization of the Islamic Conference and the representative of the Secretary-General of the United Nations, to the decisions adopted by the first round of the tripartite meeting of Islamabad. It further expressed the hope that the international community will extend full support and cooperation to this trilateral effort in pursuit of a just and peaceful settlement.

The meeting, bearing in mind the assessment of the Islamabad meeting of the positive elements in the Secretary-General's five-point statement, reaffirmed the previously adopted position on this matter and recommended that a delegation composed of Afghan Mujahideen parties based in Iran and Pakistan meet the Secretary-General in order to inform him of their views and hold further talks on the statement. The meeting also decided to send such a delegation to the forthcoming General Assembly session in New York and the Summit of the Organization of the Islamic Conference in Dakar.

An ad hoc committee of the second round of the tripartite meeting in Tehran was appointed to make all necessary preparations for the third round of the tripartite meeting in Islamabad. For such preparations, including the

agenda, and to ensure success and progress at the next round in Islamabad, the ad hoc committee will receive views and suggestions.

The meeting paid careful attention to current developments in the Soviet Union and expressed the hope that these developments would contribute to the speedy settlement of the Afghanistan problem. The Afghan Mujahideen parties are ready to initiate a substantive dialogue with Moscow.

The meeting reiterated that any solution for the Afghanistan problem should lead to the replacement of the present illegal regime in Kabul and the establishment of an elected Islamic government, acceptable to the people of Afghanistan. The meeting emphasized that the will of the people of Afghanistan alone can determine the future of that country.

The meeting condemned the current bombardment of the residential areas and killing of the innocent people of Afghanistan by the Kabul regime. The Afghan Mujahideen parties expressed their firm determination aimed at the continuation of jihad and the realization of their Islamic aspirations consistent with the intensification of their political efforts.

The meeting welcomed the growing unity among all Islamic and patriotic forces who supported the Afghan jihad and emphasized the need for sustaining and accelerating this trend.

The meeting reiterated its resolve to work for peace and just solution of the Afghanistan problem that will enable the people of the three brotherly countries, Afghanistan, Iran and Pakistan to devote their energies for the peace and progress of the entire region.

The delegations of Pakistan and the Afghan Mujahideen expressed thanks and appreciation to Iranian brothers for the warm hospitality accorded to them during the second round. The meeting decided to hold the third round of the tripartite meeting in Islamabad.

ANNEX IV

Law concerning the organization and authorities of law courts
in the Republic of Afghanistan

(Text as provided by the Government)

General Provisions

Article 1:

This law was legislated in accordance with the provisions of Article 116 of the Constitution of the Republic of Afghanistan with a view to organizing matters related to the structure, composition and powers of the law courts in the Republic of Afghanistan.

Article 2:

The judiciary is an independent organ of state and composed of the following courts:

1. The Supreme Court
2. The Courts of Appeal
3. The High Courts
4. The Primary Courts

The Supreme Court is authorized to establish, when necessary, special and mobile courts.

Article 3:

1. The powers of these courts consist of processing all cases in which real persons or legal entities including the state pose as plaintiff or defendant before the courts according to the provisions of law.

2. The courts have the powers to take up the following cases:

1. Those stemming from criminal offence
2. Civil or commercial cases
3. Other cases submitted to the court according to the provisions of law.

Article 4:

Cases are processed in the courts on a collective basis as follows:

1. In the initial stage, by three judges. Should the judges number less than three, the matter could be tackled by less than three judges.

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2. In the appeal stage, by three judges.
3. Cases pertaining to administration, labour and workers
4. In the cassation stage, by three or more than three judges.

Article 5:

Cases are processed in the law courts, in view of a collective principle, in the following manner:

1. In the primary stage, by three judges. In case the judges number less than three, they can proceed with processing the case notwithstanding.
2. In the appeal stage, by three judges.
3. In the probation stage, by three judges or more.

Article 6:

1. The accused is entitled to be defended by himself or his defence attorney.

2. A Department of Legal Aid shall be established within the framework of the Supreme Court to help the accused or other persons who have no defence attorney and cannot afford to hire defence attorneys.

The organization, powers and operations of the Defence Office shall be regulated through special regulations prepared by the High Council of the Supreme Court.

Article 7:

In civil, commercial and administrative cases, etc., real persons and legal entities are entitled to hire defence attorneys according to provisions of law.

Article 8:

No court can refuse issuing verdicts on cases already processed by them. No case can get out of court prior to taking a decision by the same.

Article 9:

The parties to the dispute are entitled to appeal to a higher court, according to the provision of the law, about the verdicts of the lower ones. The final verdicts are exceptions to this rule.

Article 10:

In case the court finds out during processing that the law has been violated, it shall inform the Office of the Attorney General accordingly.

Article 11:

Judges cannot assume membership in a political party as long as they are in the service of the judiciary.

Part One:
Organization of the Supreme Court

Article 12:

The Supreme Court is the highest judicial organ of the State, heading the unified judicial system and composed of the following:

1. The High Council
2. The Panel for General Criminal Cases
3. The Panel for Public Security Cases
4. The Panel for Civil Cases
5. The Panel for the Armed Forces.

Article 13:

The High Council of the Supreme Court consists of the following:

1. The Chief Justice, as its Chairman
2. The deputies to the Chief Justice, as Vice-Chairmen
3. The heads of various Supreme Court tribunals, as Members
4. The head of the Supreme Court secretariat, who is also a member of the Supreme Court, as secretary.

Article 14:

The Panel for the General Criminal Cases is composed of the following:

1. The Chamber for General Criminal Cases
2. The Court for Impeachment of Judges and Disputes Over Competence of Courts.

Article 15:

The Supreme Court Panel for Cases of Public Security will consist of the following:

1. The Public Security
2. The Chamber for Offences Against Internal and External Security.

Article 16:

The Civil Cases Panel consists of the following:

1. The Civil and Public Rights Chamber
2. The Commerical Chamber.

Article 17:

The Supreme Court Panel for the Armed Forces is composed of the following:

1. The Chamber for Offences of Officers and Junior Cadets
2. The Chamber for Offences of Soldiers.

Article 18:

Each panel holds its session under the chairmanship of a Deputy Chief Justice and each tribunal under that of a Supreme Court member.

1. In case the quorum of a meeting is not complete at a panel or tribunal meeting, the Chief Justice is entitled to assign one or more members of the Supreme Court to complete it.
2. Should a member of the Supreme Court be assigned, in the absence of the tribunal chairman, the former shall have the duties and powers of the tribunal chairman.
3. If a member of the Supreme Court is assigned, in the absence of the head of tribunal, as such head, he shall be entitled to enjoy the powers and duties of the head of tribunal.
4. The Chief Justice is entitled, if necessary, to assign members of one tribunal to another, temporarily.
